

MICHAEL J. SHEPARD (SBN 91281)
mshepard@kslaw.com
KING & SPALDING LLP
50 California Street, Suite 3300
San Francisco, CA 94111
Telephone: +1 415 318 1200

KERRIE C. DENT (Admitted *pro hac vice*)
kdent@kslaw.com
1700 Pennsylvania Avenue, NW, Suite 900
Washington, DC 20006-4707
Telephone: +1 202 626 2394

CINDY A. DIAMOND (SBN 124995)
cindy@cadiamond.com
58 West Portal Ave #350
San Francisco, CA 94127
408.981.6307

Attorneys for Defendant
ROWLAND MARCUS ANDRADE

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

UNITED STATES OF AMERICA

Plaintiff,

v.

ROWLAND MARCUS ANDRADE,

Defendant.

Case No. 3:20-cr-00249-RS [LB]

**DEFENDANT ANDRADE’S EX PARTE
MOTION TO COMPEL GOVERNMENT
TO DISCLOSE ATTORNEY
INFORMATION AND TO REFRAIN
FROM RETURNING ALEXANDER
LEVIN’S DEVICES UNTIL SUBPOENA
IS SERVED AND MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION**

Hon. Laurel Beeler, Magistrate Judge

1 Defendant Rowland Marcus Andrade brings this motion to compel the government to
2 disclose the name and contact information of the attorney to whom it plans to return Alexander
3 Levin's iPhone and iPad, and to refrain from returning the devices to Levin or his attorney until
4 after Mr. Andrade's lawyers have had a reasonable amount of time to serve a subpoena for the
5 devices.

6 This motion is brought *ex parte*, for immediate consideration, under CAND Criminal
7 Local Rule 47-1(a)(2), which permits filing of an *ex parte* motion for good cause, pursuant to
8 Local Rule 47-3. This motion is supported by the attached memorandum of points and
9 authorities, and attachment-1 to this motion, i.e., a declaration of counsel attesting to the urgency
10 of this request and why *ex parte* relief with limited or no notice is appropriate.

11 DATED: November 9, 2023

KING & SPALDING LLP

12
13
14 By: /s/ Michael J. Shepard

MICHAEL J. SHEPARD
KERRIE C. DENT

15
16 Attorneys for Defendant
17 ROWLAND MARCUS ANDRADE
18
19
20
21
22
23
24
25
26
27
28

MEMORANDUM OF POINTS AND AUTHORITIES

This ex parte motion requests that the Court 1) order the government to provide Mr. Andrade with the name, phone number, and email address of Mr. Levin's attorney and 2) order the government to refrain from returning Mr. Levin's iPhone and iPad to either Mr. Levin or his attorney until Mr. Andrade has a reasonable opportunity to serve a subpoena for the devices. Immediate consideration by the Court is necessary to ensure that the Levin devices – which the Court ruled are material to Mr. Andrade's defense – are not destroyed prior to Mr. Andrade having the opportunity to subpoena them. *See* Declaration of Kerrie C. Dent at ¶ 2 (Attachment-1).

Reason For Ex Parte Relief

Ex parte relief from 14-days for a noticed motion is permissible under Local Criminal Rule 47-1(a)(2), when good cause is shown. The document must be fewer than five-pages long, with supporting affidavits to justify the relief sought “without notice or with limited notice to the opposing party.” Local Criminal Rule 47-3(a)(1) and (a)(2).

This request was made urgent by the government's November 9, 2023 filing, wherein the government indicated that the FBI in New York intended to, or has already, mailed Levin's devices to Levin's attorney. Dkt# 237 at 2:3-4. This decision in New York was made in November, 2023, long after the government was in this district was engaged in litigation about Mr. Andrade's right to review the content of the devices. As stated in the supporting declaration (Attachment-1 to this motion), the government has been told Mr. Andrade is been seeking the requested information several times, thus, the government is not prejudiced if this matter heard by the Court with limited or no notice. Conversely, if Mr. Andrade were required to bring a motion with fourteen days notice, as required by Local Rule 47-2(a), the government could return the devices -- allowing for them to be removed from the jurisdiction or destroyed -- before

1 Mr. Andrade were able to deliver a subpoena for the items. Mr. Andrade's right to subpoena the
2 devices would likely be moot were these requests delayed for another fourteen days.

3 **Reason For Request For Discovery and Delay of Return of Evidence**

4 On April 7, 2023, the Court granted Mr. Andrade's motion to compel production of the
5 iPhone and iPad of Alexander Levin, finding that they are material to the preparation of Mr.
6 Andrade's defense. Dkt. #165. Six weeks later, on May 25, rather than produce Cellebrite
7 images of the iPhone and iPad, the government produced four partially redacted spreadsheets
8 summarizing some messages on Mr. Levin's iPhone, and it produced nothing relating to the
9 iPad. Mr. Andrade filed a supplemental brief in support of his request for Mr. Levin's devices
10 on September 29, 2023 (Dkt. #215), and the Court held a hearing on November 2, during which
11 the Court ordered the government to update it within a week about whether an image of Mr.
12 Levin's cell phone has been returned to Mr. Levin, and if not, whether the government objects to
13 doing so. Dkt. ## 234 and 235.

14 Later on November 2, Ms. Dent – one of Mr. Andrade's lawyers at King & Spalding –
15 emailed the government:

16 Please let us know as soon as you learn whether the SDNY or FBI or other
17 government agency still has Levin's device or devices, and, if so, whether
18 they plan to return anything to Levin. If they still have any devices and
19 will return them, then we ask to be notified when, to whom, and where
20 any device is going to be returned. Please provide this notice sufficiently
21 reasonably in advance so that we can serve a subpoena for what is
22 returned. Similarly, if they already have returned the device, please let us
23 know where and to whom it was sent so that we can serve a subpoena.

24 The government did not respond to the email. Dent Declaration at ¶3. Prior to November 9,
25 2023, Mr. Andrade obtained a subpoena for Levin's devices, to be used in the event Levin had
26 possession of the devices and to be served if Levin could be located.

27 On November 9, 2023, in response to the Court's November 2 Order, the government
28 reported that it does not object to returning Mr. Levin's cell phone to Mr. Levin and that prosecutors
in the Southern District of New York had, in fact, attempted to reach Mr. Levin's counsel a year ago
to return his devices, but Mr. Levin's counsel had not responded. Based on their reported contact

1 with Levin's representative this month (November 2023), the government has contact information for
2 Levin's attorney and either has, or will shortly, mail the devices to that attorney. Dkt # 237 at 1:27-
3 2:4.

4 After receiving the government's report, Mr. Andrade's counsel reached out to AUSA
5 Highsmith on November 9, by email and by phone, to remind him that Mr. Andrade would like to
6 serve a subpoena for Mr. Levin's devices. To ensure that the devices are preserved until he is
7 provided with the devices the Court has ruled are material to his defense, Mr. Andrade has asked that
8 the government provide him with the name and contact information for Mr. Levin's attorney and
9 refrain from returning the devices to Mr. Levin or his attorney until after Mr. Andrade has had a
10 reasonable amount of time to serve a subpoena for the devices. Mr. Andrade has not yet heard back
11 from the government. Dent Declaration at ¶4.

12 For the foregoing reasons, this Court should grant Mr. Andrade's motion and 1) compel
13 the government to disclose the name and contact information of Mr. Levin's attorney and 2) require
14 the government to refrain from returning the devices to Mr. Levin until Mr. Andrade has had a
15 reasonable amount of time to serve a subpoena for Mr. Levin's devices, which the Court ruled are
16 material to the preparation of Mr. Andrade's defense. Dkt # 165 (April 7 Discovery Order).

17 Respectfully submitted,

18 DATED: November 9, 2023

KING & SPALDING LLP

19 By: /s/ Michael J. Shepard

20 MICHAEL J. SHEPARD
21 KERRIE C. DENT
22 CINDY A. DIAMOND

23 Attorneys for Defendant
24 ROWLAND MARCUS ANDRADE
25
26
27
28